

§216.251

(b) The incidental take by Level A harassment, Level B harassment, or mortality of marine mammals under the activity identified in this section is limited to the following species: Atlantic bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), dwarf sperm whales (*Kogia simus*) and pygmy sperm whale (*Kogia breviceps*).

§216.251 Effective dates.

Regulations in this subpart are effective from December 26, 2006 until December 27, 2011.

§216.252 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.257, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment, including lethal take within the area described in §216.250(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The taking of marine mammals under a Letter of Authorization is limited to the species listed in §216.250(b) and is limited to a total of 1 mortality, 2 takes by Level A harassment, and 53 takes by Level B harassment annually.

§216.253 Prohibitions.

Notwithstanding takings contemplated in §216.250 and authorized by a Letter of Authorization issued under §§216.106 and 216.257, no person in connection with the activities described in §216.250 shall:

(a) Take any marine mammal not specified in §216.250(b);

(b) Take any marine mammal specified in §216.250(b) other than by incidental, unintentional Level A or Level B harassment or mortality;

(c) Take a marine mammal specified in §216.250(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter

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of Authorization issued under §§216.106 and 216.257.

§216.254 Mitigation.

The activity identified in §216.250(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammal species and stocks and their habitats. When conducting operations identified in §216.250(a) under a Letter of Authorization, the following mitigation measures must be implemented:

(a)(1) For the JASSM, the holder of the Letter of Authorization must establish and monitor a safety zone for marine mammals with a radius of 2.0 nm (3.7 km) from the center of the detonation and a buffer zone with a radius of 1.0 nm (1.85 km) radius from the outer edge of the safety zone.

(2) For the SDB, the holder of the Letter of Authorization must establish and monitor a safety for marine mammals with a radius of no less than 5 nm (9.3 km) for single bombs and 10 nm (18.5 km) for double bombs and a buffer zone from the outer edge of the safety zone with a radius of at least 2.5 nm (4.6 km) for single bombs and 5 nm (18.5 km) for double bombs.

(b) Prior to a JASSM or SDB launch:

(1) If any marine mammals are observed within the designated safety zone prescribed in condition (a)(1) above, or within the buffer zone prescribed in condition (a)(2) above and it/they are on a course that will put them within the safety zone prior to an JASSM or SDB launch, the launch must be delayed until all marine mammals are no longer within the designated safety zone.

(2) If any marine mammals are detected in the buffer zone and subsequently cannot be reacquired, the mission launch will not continue until the next verified location is outside of the safety zone and the animal is moving away from the mission area.

(3) If weather and/or sea conditions preclude adequate aerial surveillance for detecting marine mammals, detonation must be delayed until adequate sea conditions exist for aerial surveillance to be undertaken. Adequate sea conditions means the sea state does not exceed Beaufort sea state 3.5 (i.e.,